SEP 17 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

KEN L. MICHAELIS,)
Appellant,)
vs.)
NEBRASKA STATE BAR ASSOCIATION,)
Appellee.)

Case No. 81-6710

BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

Comes now Ken L. Michaelis, appellant, and vigorously opposes the Appellee-Respondent's Motion to Dismiss or Affirm for the following reasons:

1. That the appellee Nebraska State Bar Association (NSBA) is totally ignoring and whitewashing the appellee's, NSBA's, useage of such intimidating, drastic, and heinous tactics such as falsely alleging that the appellant was "mentally ill" amidst the 1978 political campaign for Cuming County (Nebraska) Attorney. The Nebraska Supreme Court did the same thing! Absolutely no evidence existed in the least to allege such a drastic charge. Such has been the arbitrary, capricious, and malicious tactics appellant had to confront.

The appellant was and has always been shocked by such undertakings and appellant's consequent needs to defend himself against such evil charges. They control the machinery! Power corrupts!

The Nebraska Supreme Court was utilized already in 1978 to effectuate these tactics and maneuvers employed by a suspected small group of lawyers considered influential in Northeast Nebraska.

That matters of this nature are never inconsequential given the constitutional scheme of our democratic republic.

2. The Constitution was created and nurtured to protect the sovereign citizenry from unscrupulous, arbitrary, capricious, and malbious government action - whether it be carried out by the judicial branch, legislative, or executive. This includes the NSBA!

The Supreme Court of Nebraska and the NSBA cannot be allowed to act arbitrarily, capriciously, or maliciously. The Canons of Ethics exist to protect the sovereign people and citizenry from unscrupulous lawyers - not to protect the lawyers and the courts from the sovereign people and their right to know the happenings and occurrences in their courts, government, and legal profession.

3. The Canons of E[illegible]hics are not to be exploited by the Nebraska Supreme Court in far-fetched interpretations that trample upon the most basic and fundamental constitutional rights and liberties of every

American - including lawyers. The Nebraska Supreme Court cannot act in a vacuum completely contrary to the basic and most fundamental freedoms guaranteed by the Constitution of the United States.

4. Contrary to appellee's contentions, there is never "adequate state ground" to violate the Constitution of the United States. The United States Supreme Court has erected the proper standards and safeguards such as clear and present danger, etc.

The Soviet Union might consider it has adequate "state ground" to silence and quiet Soviet citizens by charging them with being "mentally ill" and other tactics of despotism. This is not Soviet Russia.

5. That the true motives and basis of these actions by appellee against the appellant is apparently the appellant's statement in 1978 that he somewhat agreed with Chief Justice Burger's assessment of the legal profession and the article "Those **!# Lawyers" in the April 10, 1978 edition of Time Magazine.

6. If constitutional freedom of speech, free expression, due process, and free conscience do not present substantial federal questions then, indeed, there are few, if any, federal questions. The Constitution is then a nullity.

7. All the initial statements made by appellant were political statements - most often made to rebut false charges by the opposition. These were matters for the voters of Cuming County to decide - not the NSBA

Appellant was merely defending himself throughout these matters as best he knew how given the tactics, money, and influence and power of the opposition. The so-called "legitimate channels" were the source of the knowingly false charges of "mental illness" and many of the other tactics of harassment and arbitrary and capricious activity.

8. The really horrendous and only "scurrilous attacks" occurred against the appellant at the behest and contrivance of the appellee.

9. The relevant communications by appellant were solicited by the press, media, and several times the radio after the appellee caused press releases to be printed by the media against the name and reputation of the appellant. Appellee prefers to employ the continuing tactics of deception and misrepresentation that have succeedrd so far in causing great harm and injury to the appellant.

In matters of political and governmental concern the public's right to know is always paramount. Mistakes occur but this freedom must not be chilled.

10. The appellee is intentionally deceiving this Court into thinking others have been injured - and unjustly. The only party or person injured has been the appellant, his wife, their three young children, the Constitution of the United States, and the rights of the people. The opposition controlled the media, press, had the power and exploited it by very drastic and malicious tactics. Appellant's greatest error was believing all he had to be was truthful and he would eventually prevail over such intrigue.

11. Appellee desires that this highly esteemed and respected Court accept the "brief reference to the record" as expounded by the appellee and as set forth in the opinion of the Nebraska Supreme Court. Nothing could be much further from the truth!

12. Having arbitrarily controlled and exploited the machinery and tactics employed herein throughout the past four years, the appellee now seeks to "stonewall" this case to prevent the first and only chance for unbiased, objective, and truthful consideration, concern, and review within the context of objectivity, propriety, justice, and the Constitution of the United States.

The failure of this high court to review this matter will work an extreme disservice upon the Constitution of the United States, upon the American legal profession, and upon the sovereign American people and their form of government.

13. The last thing this appellant ever wanted was to be caught in any conflict with the NSBA or to be forced to defend himself. Appellant was given no choice! The various matters throughout the past four years have naturally angered the appellant and caused great despair.

What the appellant stated when he was contacted or forced to defend himself from unfounded, malicious, and arbitrary charges has absolutely no logical relevance with appellant's fitness to practice law.

As a fallible human being, appellant naturally made some mistakes politically and legally in trying to defend himself. Nothing approaches the severity of intentional tactics and wrongdoing undertaken by the appellee and the few Nebraska lawyers who controlled the appellee.

14. The arbitrary and capricious action undertaken by the Nebraska Supreme Court herein was an original action. For an appeal, appellant is completely at the mercy of this Court.

Failure to reverse the Nebraska Supreme Court decision will "chill" the freedom of expression of every lawyer who desires to see good

government and a clean and honest legal profession. Lawyers will fear that they cannot inform the public - the sovereign public - the least about the most severe or even greatly criminal activities by state judges or occupants of the Nebraska Supreme Court. Thus the judiciary arises above the law, above accountability, and gods-unto-themselves. This is how and why the heinous tactic of charging "mental illness" without any basis other than arbitrary and capricious despotism was allowed to occur in this matter.

15. The sovereign people of Nebraska are forced to pay all the costs and expenditures of the state courts but, without proper avenues for knowledge about the judges and courts, the sovereign people can exert absolutely no control, impact, or even concern about their courts.

The tactic of the Nebraska Supreme Court is that of making itself and the judges "above the law" and beyond accountability to the public. This is unconstitutional privilege, caste, and immunity which the United States Supreme Court has oftened denied for itself.

16. The United States Supreme Court has said the case best to reverse the Nebraska Supreme Court's opinion herein. Appellant cited forty-four (44) U.S. Supreme Court cases in his brief submitted to the Nebraska Supreme Court. Appellee cited none to substantiate appellee's position - for none are to be found!

In its opinion of February 12, 1982, the Nebraska Supreme Court quoted matters totally out-of-context, arbitrarily and capriciously selected and stated matters to substantiate and justify the Nebraska Court's predetermined desire to have revenge upon the appellant. The Nebraska Supreme Court arbitrarily ignored each and every one of the 44 U.S. Supreme Court cases and the constitutional logic and precedents set forth by the U.S. Supreme Court.

17. The attitude, motivations, and pervasiveness of the appellee and of the Nebraska Supreme Court is reflected in the Transcript's quotation of Mr. Melvin Kammerlohr (Deputy Nebraska Attorney General):

> "As far as I'm concerned, the truthfulness is pretty much irrelevant. But, it kind of worries me that you (Michaelis) think that just because something is true, that you can publish it." (Transcript of June 30, 1980 Hearing; page 206-207).

This reflects the arrogance, capriciousness, and arbitrariness of the opposition.

18. Due to the dying and death of appellant's mother on March 23, 1982, and the consequent depths of his despair and remorse, appellant's

Jurisdictional Statement filed in this Court on May 13, 1982, was performed in extreme haste and under the duress of great despair, remorse, depression, and anger consequent to his mother's death under such trying circumstances.

Appellant has never prior as much as ever appealed a matter to even the Nebraska Supreme Court. The Jurisdictional Statement was hastily done by appellant typing night and day without little rest as the deadline fastly approached. Amidst the despair appellant forced himself to continue.

Said Jurisdictional Statement was not at that time edited or proof read. Appellant apologizes for the poor drafting, mistakes, various poor and undiplomatic word useages and phrases.

19. Contrary to the appellee's attempts to mislead this Court, all of the major happenings herein occurred during and were part of a political campaign and its aftermath. The opposition lawyers did illegally and unconstitutionally (See Brown v. Hartlage, U.S. Supreme Court No. 80-1285, 50 Law Week 4359, decided by a unanimous Supreme Court April 5, 1982) remove appellant's name from the 1978 Primary Election and the Election Ballot. This commenced the whole matter.

Perceiving that the political activities of the opposition were unconstitutional, appellant spoke out to so inform the sovereign people. The electors had a right to know what was occurring and the appellant had a constitutional duty to inform the electorate. In retaliation for the appellant undertaking this duty to the electorate, the appellee has engaged in this reign of despotic arbitrariness, caprice, and malice. Regretfully, once a transgression occurred against the appellant, the opposition wanted him silenced. That is why this matter has mushroomed. The opposition has some "sacred cows"! This is wholly contrary to the Constitution of the United States.

20. The appellee, through the Committee on Inquiry, arbitrarily demanded that the appellant tell them any and everything appellant knew concerning other lawyers and their misdeeds. Appellant refused unless the same demand was made upon all licensed Nebraska lawyers.

The committee insisted. Coercion and intimidation were used. Appellant knew they would destroy him if he refused further. Appellant finally succumbed to their demands. This is the basis then used by the committee and the Nebraska Supreme Court to attack the appellant -

stating the appellant made "scurrilous attacks" upon the bar and bench. They forced the appellant to state matters and then arbitrarily, without any investigation, proclaim it to be false and then attack the appellant for stating falsehoods. This is very despotic, reprehensible, and unconstitutional. The NSBA cannot be allowed to police itself.

Appellant was forced, intimidated, and coerced into stating what the then Mayor of West Point, Nebraska and several former school board members had told appellant about the conflicts of interest and apparent corruption by the Moodie law firm as City Attorney and School Board Attorney for acts in 1961, 1962, and 1970 to 1972 (Periods prior to appellant even being a lawyer). The appellee and the Nebraska Supreme Court arbitrarily declared and god-like decreed that these were false statements without having any basis whatsoever to come to such a conclusion other than an attempt to coverup or whitewash the truth.

These coerced statements were then used to attack the appellant. One thing for certain, the public of West Point and Cuming County had the right to know and judge the truth. Many already did know and suspected Moodies of having often self-served themselves in government. The Moodie-controlled local press has never allowed a bit of this to be aired publically even to this date.

21. That the appellee, NSBA, with the concurrence of the Nebraska Supreme Court have refused all of appellants numerous Motions to make the charges over the years against the appellant far more definite and certain; to include pointing out what are the specific falsehoods appellant is alleged to have uttered. The NSBA and Nebraska Supreme Court refused these very legitimate requests. They knew appellant could never defend himself against such general and broad charges as the appellee arbitrarily chose to pursue and fabricated.

The closest to any certainty has been the many falsehoods stated in the February 12, 1982 opinion of the Nebraska Supreme Court. Now the appellee is content that they have gotten away with this travesty of justice and due process. To them, the truth means nothing!

By imperial and god-like decree the appellee and the Nebraska Supreme Court have stated some unknown something is false without stating what exactly is the alleged falsehood for identity purposes. Not a scintilla of proof or testimony exists that this unknown is false. It is false merely because they say it is false. This is arbitrary, capricious, and despotic government.

22. The wholly one-sided, intimidating, and coercive intrigues by the Committee on Inquiry for the 9th Judicial District were discredited from the outset. They were Star Chamber proceedings much in the vogue of Gestapo Hearings and KGB inquisitions; to-wit; the "mental illness" and other comparable gimmicks.

23. The appellant has undertaken many readings of the documents mentioned in the Nebraska Supreme Court opinion. Appellant has tried to be very objective. In no way can appellant agree with the subjective, arbitrary, and capricious attitude exhibited in the opinion. Numerous intentional misrepresentations exist inorder to achieve the court's predetermined objectives. For example, no where does any document allege "conspiracy on the part of three Cuming County officials".

24. Appellant has uttered nothing that he knew to be false or that he should have known to be false. This is a fabricated charge just as the charge of "mental illness" was totally fabricated by the same sources for political and occupational gains contrary to the democratic guarantees of the Constitution of the United States.

Appellant has never even hinted at certain defenses such as "campaign rhetoric" which the Nebraska Supreme Court inaccurately or falsely alleges and states that the appellant utilized as a defense. Many other inaccuracies exist in the February 12, 1982 opinion of the Nebraska Supreme Court.

For the foregoing reasons, especially to uphold and to defend the Constitution of the United States, appellant respectfully requests that this Court overrule the appellee's Motion and that this Court grant the review and appeal so desperately necessary for proper Constitutional due process and Constitutional freedom of expression, conscience, and speech.

Respectfully submitted,

KEN L. MICHAELIS, Appellant.

Ken L Michaelis

220 S. Colfax Street; West Point, NE 68788 Tel: (402) 372-5614

STATE OF NEBRASKA)
County of Cuming) ss.

AFFIDAVIT OF PROOF OF SERVICE

I, Ken L. Michaelis, appellant herein, being first duly sworn, do hereby state under oath that on this date I served a copy of this Brief upon the appellee by depositing said copy in the United States Mail, postage prepaid, addressed to Melvin Kent Kammerlohr, Assistant